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| <p style="text-align: right;">Page 86</p> <p>1 earlier than that discussion of terminating the<br/>2 trust, or was that the first time that you looked<br/>3 into that?</p> <p>4 A. We had been considering it for some time, and it<br/>5 was soon after the various lawsuits had been filed<br/>6 that we felt we were in a position to follow through,<br/>7 and continue to look to distribute the assets to the<br/>8 trust beneficiaries, would be in the best interest of<br/>9 all the beneficiaries here. Short of that, a<br/>10 valuation of the Eber assets was a stumbling block.</p> <p>11 Q. Now, to the extent that you can, please walk me<br/>12 through your analysis in determining to terminating<br/>13 the trust was the best thing for the beneficiaries of<br/>14 the trust, in that situation?</p> <p>15 A. Well, in looking at ensuring that all of the<br/>16 beneficiaries and the step down here to the second<br/>17 and third generations who are receiving the assets,<br/>18 our determination was to ensure that assets get to<br/>19 the appropriate hands, rather than having much of it<br/>20 depleted by one sector -- one side of the family.<br/>21 And so, as we took a look at it, because we had<br/>22 assets that are non-marketable, we were looking at<br/>23 distributing and benefiting the family units<br/>24 themselves, the three family units, to the greatest<br/>25 extent to avoid any loss of value. And also, to</p> | <p style="text-align: right;">Page 88</p> <p>1 Q. The possibility of a claim --<br/>2 A. Okay.<br/>3 Q. -- factor into the determination that<br/>4 terminating the trust would be the best course for<br/>5 the beneficiaries?</p> <p>6 MR. O'BRIEN: If at all.<br/>7 MR. BROOK: If at all.<br/>8 A. If at all, it factored into the lack of ability<br/>9 to be able to provide a fair value for the stock. It<br/>10 would allow for the trustee to be able to distribute<br/>11 the stock to the beneficiaries, possibly equally, so,<br/>12 that they would be able to then reap any kind of<br/>13 benefit there, if there was a need to bring any kind<br/>14 of action.<br/>15 Q. So, is it --<br/>16 A. We felt our hands were tied, so to speak,<br/>17 because we were not -- we had two co-trustees that<br/>18 had an interest in this, and by looking to distribute<br/>19 to the beneficiaries, if there was a desire, then the<br/>20 beneficiaries could take appropriate action.<br/>21 Q. So, is it fair to say, that it factored into the<br/>22 decision in that, if an action was to be brought by<br/>23 terminating the trust, that action could be brought<br/>24 directly by the former beneficiaries, because they<br/>25 then owned the shares directly?</p> |
| <p style="text-align: right;">Page 87</p> <p>1 consider providing for those family members, because<br/>2 there had been a decrease and a loss in income coming<br/>3 from the other Eber assets.</p> <p>4 Q. Now, to what extent, if at all, did the<br/>5 possibility of filing a claim alleging a fraudulent<br/>6 transfer factor into your analysis of whether<br/>7 terminating the trust was beneficial for the<br/>8 beneficiaries?</p> <p>9 MR. O'BRIEN: Form.</p> <p>10 MR. RAMSEY: Form.</p> <p>11 A. To what extent -- can you restate the question,<br/>12 please?</p> <p>13 Q. Now, we had been talking a minute ago about the<br/>14 possibility of filing a claim on behalf of the trust,<br/>15 as the equity holder of the parents of the company<br/>16 had authorized the transfer here, whether there could<br/>17 be a claim filed there. And you said, rather than do<br/>18 that, the decision was made to terminate the trust.<br/>19 Is that a fair description?</p> <p>20 A. Yes.</p> <p>21 Q. So, how did that possibility of the filing of<br/>22 the claim factor into the determination that<br/>23 terminating the trust was beneficial for the<br/>24 beneficiaries?</p> <p>25 A. How did the --</p>   | <p style="text-align: right;">Page 89</p> <p>1 A. They would be looking at owning the shares<br/>2 directly, yes.</p> <p>3 Q. If you would please turn to the fourth page of<br/>4 the Exhibit. It says at the top, minutes from<br/>5 meeting of Officers for the trust of Allen Eber, do<br/>6 you see that?</p> <p>7 A. Yes.</p> <p>8 Q. And this is with the last three page numbers<br/>9 857. So, this refers to a meeting on August 18th,<br/>10 2011, do you see that?</p> <p>11 A. Yes.</p> <p>12 Q. It says that Elliot Gumaer, Lester Eber, and<br/>13 Richard Hawks, trustees of the trust of Allen Eber,<br/>14 met at the Canandaigua National Bank in Rochester,<br/>15 New York, to discuss and ratify the actions of the<br/>16 subsidiaries as described below, and discuss other<br/>17 trust business. Is that a fair description of what<br/>18 happened during that meeting?</p> <p>19 A. At the meeting there were various forms that<br/>20 were presented --</p> <p>21 MR. CALIHAN: There were various what?</p> <p>22 A. Forms presented. The actual documentation and<br/>23 so forth was discussed, but I did not see specific<br/>24 references to the loans. We discussed the fact that<br/>25 there are several things that were going on here and</p>    |

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| <p>Page 90</p> <p>1 needed to be done, but had nothing to do with -- the<br/>2 trustees had nothing to do with the determination of<br/>3 the various obligations.</p> <p>4 Q. Okay. So, just to make sure we are oriented<br/>5 here, so this is describing the meeting that occurred<br/>6 about ten months before the one we were looking at<br/>7 just a minute ago? So this is --</p> <p>8 A. Yes.</p> <p>9 MR. O'BRIEN: You mean the meeting?</p> <p>10 MR. BROOK: The meeting, yes.</p> <p>11 MR. O'BRIEN: The conference call meeting?</p> <p>12 MR. BROOK: Well, the other one was a<br/>13 conference call meeting, and this one was an in<br/>14 person meeting, except, I think it says here, if you<br/>15 look at the next sentence, that Gumaer participated<br/>16 by conference call, and it says Wendy Eber was also<br/>17 present to facilitate and document the discussion, is<br/>18 that correct?</p> <p>19 THE WITNESS: Yes.</p> <p>20 BY MR. BROOK:</p> <p>21 Q. And it says -- the next paragraph reads: The<br/>22 trustees ratified three loans made by Lester Eber to<br/>23 Eber Brothers Metro, Inc., do you see that?</p> <p>24 A. Yes.</p> <p>25 Q. And is that a fair description of what took</p>                     | <p>Page 92</p> <p>1 on Lester's good will, he gave the money for the<br/>2 loan. The loans were ratified by Rick Hawks and Mike<br/>3 Gumaer, Lester Eber abstained. A copy of all the<br/>4 documents that relate to the loan was provided to<br/>5 Richard Hawks. Is that paragraph -- did I read that<br/>6 correctly, what's on the page? Just making sure, did<br/>7 I read that correctly?</p> <p>8 A. Yes.</p> <p>9 Q. Okay. And is, what I just read as described on<br/>10 the page, an accurate description of what took place<br/>11 during this meeting on August 18th, 2011?</p> <p>12 A. A copy of all the documents related to the loan<br/>13 was provided to me, did not occur at that time.</p> <p>14 Q. When, if ever, did that occur?</p> <p>15 A. It occurred after I made the next request which<br/>16 was at the meeting we had in January of the following<br/>17 year.</p> <p>18 MR. O'BRIEN: June.</p> <p>19 Q. You mean -- was it at the next meeting?</p> <p>20 A. The June 7th, okay.</p> <p>21 Q. Was there a meeting in between the August 2011<br/>22 and June 2012 meetings?</p> <p>23 A. No, I was taking the date off here, from the<br/>24 top, which came from Wendy, which was January 2nd, of<br/>25 '13 and it was actually June 7th of '12, when we had</p>   |
| <p>Page 91</p> <p>1 place during that meeting?</p> <p>2 A. The trustees discussed that, it was -- I don't<br/>3 believe there was ever a vote taken at this meeting.<br/>4 Once again, it comes back to -- if you refer back to<br/>5 the --</p> <p>6 MR. O'BRIEN: You answered the question.</p> <p>7 THE WITNESS: Okay.</p> <p>8 Q. So, is it correct that you would not describe<br/>9 what occurred in that meeting as a ratification by<br/>10 you, of any loans that were made by Lester Eber to<br/>11 Eber Brothers Metro?</p> <p>12 MR. RAMSEY: Form.</p> <p>13 A. I would not characterize it as a ratification,<br/>14 because for the first time, we are getting the<br/>15 information of what is happening here, which led to<br/>16 probably the second memo which was the first one here<br/>17 --</p> <p>18 Q. Minutes.</p> <p>19 A. -- or minutes, which I had requested information<br/>20 which I had not received.</p> <p>21 Q. So, jumping down some to the fourth paragraph,<br/>22 it says: After a lengthy discussion about how all the<br/>23 income beneficiaries and third parties were offered<br/>24 the opportunity to participate in the February 26th,<br/>25 2010 loan, but they all declined, and that only based</p> | <p>Page 93</p> <p>1 the second meeting, but the first meeting was in<br/>2 August of 2011. And that's when I -- this<br/>3 information was first provided to us, the second<br/>4 meeting was Mike talking about the changes that were<br/>5 taking place I'd requested copies of the judicial<br/>6 decision summary, and information that had not been<br/>7 provided which actually went back to the previous<br/>8 meeting, and did not -- had not received.</p> <p>9 Q. And continuing on the issue you raised of<br/>10 requesting information, if you look at the last<br/>11 paragraph, the third sentence, it says something --<br/>12 it appears to be related to the above issues, it says<br/>13 quote, Rick requested copies of the operating<br/>14 statement for Eber-CT to determine the value of the<br/>15 Corporation, they are hereto attached. Is that<br/>16 correct, that you requested a statement for Eber<br/>17 Connecticut?</p> <p>18 A. I would have requested information from Eber<br/>19 Brothers and at that time, if Eber Connecticut was<br/>20 the lending from the commercial side, what our<br/>21 lending entity was, I was looking to determine<br/>22 whether or not the liability of the organization.</p> <p>23 Q. And did you ever actually receive the statement<br/>24 that you requested?</p> <p>25 A. Not in the form that I would normally expect it</p> |

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| <p style="text-align: right;">Page 138</p> <p>1 copy of all documents related to the loan was<br/> 2 provided to you, do you recall being provided with<br/> 3 those documents at any point?<br/> 4 A. After the fact, after the second meeting, we did<br/> 5 get some of those documents, and some of them<br/> 6 actually came from our own commercial lending area<br/> 7 who had received them.<br/> 8 Q. And the second meeting is the June 12th, year<br/> 9 2012 meeting?<br/> 10 A. Yes.<br/> 11 Q. Is there a reason that you didn't follow up, or<br/> 12 push harder to get those documents sooner than June<br/> 13 of 2012?<br/> 14 A. We did not see a reason set forth other than the<br/> 15 fact we were not aware of a corporate structure<br/> 16 change until we had been informed of that by Mike<br/> 17 Gumaer later on.<br/> 18 Q. Do you recall following up at all to request<br/> 19 those documents prior to the June 2012 meeting?<br/> 20 A. I would say verbally we had requested it a<br/> 21 couple of times directly from Wendy.<br/> 22 Q. Do you know whether you ever reduced that<br/> 23 request to writing?<br/> 24 A. No.<br/> 25 Q. You didn't or you don't recall?</p>  | <p style="text-align: right;">Page 140</p> <p>1 did, okay. Long time ago.<br/> 2 Q. Understood. The last couple sentences there<br/> 3 talk about a request by Sally Kleeberg for payment of<br/> 4 medical expenses. I know you were asked a couple<br/> 5 questions about this earlier, do you recall Lester<br/> 6 ever paying -- Lester or the trust ever paying<br/> 7 Sally's medical expenses?<br/> 8 A. The trust never paid, I'm not sure about Lester.<br/> 9 As I told you, there was a period of time when things<br/> 10 were closing down with Eber Brothers, and certain<br/> 11 people have been either laid off, or were no longer<br/> 12 with the organization, and Lester did pick up two to<br/> 13 three years of medical expenses and medical insurance<br/> 14 for some of the family members who had actually<br/> 15 worked for the organization, and then, I believe it<br/> 16 was in 2011, he discontinued that.<br/> 17 Q. Okay. So, the money came from Lester<br/> 18 personally, not from the trust?<br/> 19 A. Money never came from the trust.<br/> 20 Q. When is the first time you recall seeing a copy<br/> 21 of these meeting minutes?<br/> 22 A. My first recollection would be sometime shortly<br/> 23 after our June meeting.<br/> 24 Q. At that point, based on your testimony earlier,<br/> 25 you indicated that you didn't believe -- you didn't</p>     |
| <p style="text-align: right;">Page 139</p> <p>1 A. We may have. It may have been in an e-mail<br/> 2 request, I would have to go back to the electronic to<br/> 3 find out.<br/> 4 Q. The last paragraph from the meeting minutes from<br/> 5 August 18th, 2011, makes a reference to Eber CT, and<br/> 6 your request for the operating statement relating to<br/> 7 Eber Ct. Do you see that?<br/> 8 A. Yes.<br/> 9 Q. Do you recall discussing Eber CT at that<br/> 10 meeting?<br/> 11 A. The discussion at that time would have been<br/> 12 trying to find out what had been presented to us, and<br/> 13 what Eber CT was. We were aware that there was<br/> 14 lending on the commercial side to Eber, but trying to<br/> 15 determine exactly where that corporate structure fit<br/> 16 into our organization it was unclear, and that's why<br/> 17 we had not specifically requested until then, the<br/> 18 information on Eber CT.<br/> 19 Q. So, you at least heard the name Eber CT during<br/> 20 that meeting? You weren't entirely sure where Eber<br/> 21 CT fit into --<br/> 22 A. The Corporation.<br/> 23 Q. -- the Corporation, but you remember discussions<br/> 24 about that entity, Eber CT?<br/> 25 A. As I sit here today remembering it, I believe I</p> | <p style="text-align: right;">Page 141</p> <p>1 agree that there was a ratification of the loans, you<br/> 2 didn't recall a vote taking place. Given that<br/> 3 testimony, did you ever make any type of request to<br/> 4 amend or correct these meeting minutes, to better<br/> 5 reflect what you recall taking place?<br/> 6 A. I did not.<br/> 7 Q. Was there a reason that you didn't?<br/> 8 A. Probably the only reason would be, in our mind,<br/> 9 at that point it wouldn't matter because there<br/> 10 appeared to be conflicting roles that were taking<br/> 11 place during the minute taker and what we were doing.<br/> 12 The corporate portion of the meeting is really what<br/> 13 was being recorded here, and, you know, I think there<br/> 14 was an attempt to bring in the trustee, the corporate<br/> 15 trustee, who had previously indicated that they were<br/> 16 not managing this particular asset from a financial<br/> 17 standpoint, but to bring us in to make it look like<br/> 18 we were agreeing to that.<br/> 19 Q. Given that dynamic, or that dynamic as you just<br/> 20 described it, would it be all the more reason to make<br/> 21 sure, on behalf of Canandaigua National Bank, that I<br/> 22 disagree with certain aspects of these meeting<br/> 23 minutes?<br/> 24 MR. BROOK: Objection to form.<br/> 25 A. I would say in retrospect, yes.</p> |